

Panaji, 4th June, 1998 (Jyaistha 14, 1920)

SERIES II No. 10

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

NOTE: There is one Extraordinary issue to the Official Gazette, Series II No. 9 dated 28-5-98 namely, Extraordinary dated 28-5-98 from pages 109 to 110 regarding Notification from Department of Revenue.

### GOVERNMENT OF GOA

#### Department of General Administration

##### Notification

No. 26/2/95-GA&amp;C

Read: Notification of even number dated 23-10-96; 13-3-97; 18-8-97; 7-4-97; 16-5-97; 11-6-97 and 23-4-98.

In exercise of the powers conferred by Rule 5 of the Business of the Government of Goa (Allocation) Rules, 1987 and in partial modification of the Government notification read above, the Government hereby directs that the allocation of business of the Government relating to following subject shall be allotted with immediate effect to the Secretary as indicated below in addition to the business of the subjects already held by them.

Sr. No.	Name & Designation of the Officer	Department/Subject allotted
1	2	3
1.	Secretary (Revenue) (Shri A. Venkatratnam)	1. Vigilance. 2. Administrative Reforms. 3. Official Language & Public Grievances.
2.	Secretary, Women & Child Development (Shri P. R. Bumb)	1. General Administration 2. Protocol.

By order and in the name of the Governor of Goa.

Anthony Ferrao, Under Secretary (GA).

Panaji, 12th May, 1998.

##### Notification

No. 26/2/95-GA&amp;C

The Government hereby directs that the files from Home Department from Under Secretary (Home) would be routed through Joint Secretary (Personnel) to Chief Secretary, with immediate effect.

By order and in the name of the Governor of Goa.

Anthony Ferrao, Under Secretary (GA).

Panaji, 12th May, 1998.

#### Department of Home

#### Home - General Division

##### Notification

No. 1/6/97-HD (G)

In exercise of the powers conferred by clause (s) of section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), and in partial modification of the earlier Notifications issued in this regard, the Government of Goa hereby declares the Police Out Post at Old Goa to be a Police Station with jurisdiction comprised of villages as shown in Schedule hereto.

The existing Police Station at Ribandar shall function as Police Out Post under Old Goa Police Station. The jurisdiction of Police Out Post at Ribandar shall be the village of Ribandar.

##### SCHEDULE

##### Villages comprising jurisdiction of Old Goa Police station.

- (1) Santa Cruz
- (2) Merces
- (3) Ribandar (O.P)
- (4) Chimbél
- (5) Se (Old Goa)
- (6) Cumbarjua
- (7) Corlim
- (8) Carambolim
- (9) St. Estevao
- (10) Chorao (O. P.)
- (11) Nossa-Senhora Goa
- (12) Goltim
- (13) Navelim
- (14) Sao Mattias

By order and in the name of the Governor of Goa.

A. Mascarenhas, Under Secretary (Home).

Panaji, 9th March, 1998.

##### Corrigendum

No. 1/58/87-HD (G)

Read: Government order of even number dated 13-1-1998 regarding appointment of Dr. Sarmiento Gomes as Police Medical Officer in the Office of Inspector General of Police, Panaji.

The fifth para of the above quoted Government order may be read as follows:-

"5. This issues in consultation with Goa Public Service Commission vide their letter No. COM/1/4/37(1)/89/ dated 15-1-1998".

By order and in the name of the Governor of Goa.

A. Mascarenhas, Under Secretary (Home).

Panaji, 27th January, 1998.

### Corrigendum

No. 2/117/94-HD(G)

Read: Government Notification No. 2/117/94-HD(G) dated 3-2-1998 regarding appointment of Addl. District Magistrate for General Elections, 1998.

The name of Shri S. P. Dixit, Director of Settlement and Land Record, Panaji appearing at Sr. No.3 in the above cited Notification is hereby deleted from the said Notification.

By order and in the name of the Governor of Goa.

A. Mascarenhas, Under Secretary (Home).

Panaji, 6th February, 1998.

### Corrigendum

No. 3/34/86-HD (G)

Read: Government Order No. 3/34/86-HD(G) dated 13-8-1996 constituting a Technical Committee for acceptance/rejection of tenders for the fabrication and supply of Fire tenders and other machinery/equipments.

The name of Shri R. Rajgopalan, Superintending Engineer (M & E), Circle VII (Stores), P.W.D., Altinho, Panaji at Sr. No. 2 of the above referred order shall be substituted by the following:-

- |                                       |     |        |
|---------------------------------------|-----|--------|
| 2. Shri P. P. Borkar,                 | ... | Member |
| Superintending Engineer, Circle VIII, |     |        |
| P.W.D., Altinho, Panaji.              |     |        |

By order and in the name of the Governor of Goa.

A. Mascarenhas, Under Secretary (Home).

Panaji, 6th April, 1998.

## Department of Industries

### Notification

No. 15/5/80-ILD-Vol. I

In exercise of the powers conferred by Section 4 of the Goa, Daman & Diu Industrial Development Act, 1965 (Act 22 of 1965) the Government is hereby pleased to extend the terms of the Directors of Goa Industrial Development Corporation constituted vide Notification No. 15/5/80-ILD-Vol. I dated 5-4-95 and 12-9-97 for additional period of three years w.e.f. 5-4-98.

The Government is also pleased to nominate Joint Secretary (Finance) as one of the Directors of Goa Industrial Development Corporation in place of Finance Secretary.

By order and in the name of the Governor of Goa.

S. V. Bhadri, Joint Secretary (Industries).

Panaji, 1st April, 1998.

## Department of Inland Waterways

### Captain of Ports

### Order

No. 1/23/96-IWT(PF)/COP

On the recommendation of Goa Public Service Commission vide their letter No. COM/1/5/13(3)/96 dated 24th June, 1997 Government is pleased to appoint Shri Sagar Chandra Rai as Hydrographic Surveyor (Group 'A' Gazetted) in the pay scale of Rs. 3000-100-3500-EB-125-4500 in the Office of Captain of Ports, Panaji with effect from the date of his joining the post. His pay shall be fixed at minimum of the time scale of pay and he will be also entitled for all other allowances admissible to the employees of this State Government from time to time.

2. He has been medically found fit for the said posts.

3. He has not come to adverse notice and there is no report with the Police against his character and antecedents and that his identity has been established.

4. He shall be on probation for a period of two years.

By order and in the name of the Governor of Goa.

Capt. A. P. Mascarenhas, Captain of Ports and Ex-Officio Joint Secretary.

Panaji, 24th October, 1997.

### Order

No. 7/21/94-IWT

Read: 1. Government Order No. 7/30/89-IWT dated 24-8-1993.

2. Government Order No. 7/21/94-IWT dated 17-8-1994, 14-9-1994, 19-4-1995, 28-9-1995, 22-3-1996, 9-6-1996, 1-10-1996, 2-5-1997, 8-10-1997, and 28-1-1998.

Government is pleased to extend the ad hoc appointment of Shri Shivram B. Nadkarni, Workshop Superintendent in Marine Workshop, Betim under the Captain of Ports in the River Navigation Department, Panaji for a further period upto 30-6-1998 or till the said posts is filled on regular basis whichever is earlier.

This has approval of G.P.S.C. Panaji as conveyed vide their letter No. Com/II/11/41(1)/94 dated 30-4-1998.

By order and in the name of the Governor of Goa.

Capt. A. P. Mascarenhas, Captain of Ports and Ex-Officio Joint Secretary.

Panaji, 8th May, 1998.

**Order**

No. 1/11/92-IWT/COP

On the recommendation of the Departmental Selection Committee Shri George Francis Viegas is hereby appointed on ad hoc basis to the post of Marine Engineer and Ship Surveyor (Group 'A' Gazetted) in the Captain of Ports Department, Panaji with immediate effect in the pay scale of Rs. 10,000-325-15,200 (Vth Pay Commission) on the same terms and conditions stipulated in the Government Memorandum of even number dated 21st November, 1997.

The appointment will not bestow on him any claim for regular appointment and the service rendered on ad hoc basis in the grade would not count for the purpose of seniority in the grade for eligibility for promotion to the next higher grade.

Shri George Francis Viegas has been medically examined and found fit by the Medical Board, Panaji.

By order and in the name of the Governor of Goa.

Capt. A. P. Mascarenhas, Captain of Ports and Ex-Officio Joint Secretary.

Panaji, 18th May, 1998.

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**Department of Labour**
**Notification**

No. 28/11/79-LAB-PART/8207

Whereas the Government of Goa is satisfied that the public interest so requires that the services in the fertilizer and pesticides industries (hereinafter called as the "said services"), should be declared as public utility service for the purposes of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) (hereinafter called as the said Act).

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of section 2 of the said Act, the Government of Goa hereby declares the said services to be a public utility service for the purposes of the said Act, for a period of six months with effect from the date of publication of this Notification in the Official Gazette.

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 2nd April, 1998.

**Order**

No. CL/Pub-Awards/97/7162

The following Award dated 12-1-1998 in Reference No. IT/33/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary, (Labour).

Panaji, 4th February, 1998.

**IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI**

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/33/96.

Mrs. Audrey Hellen Rebello,  
Sandshar Mansion,  
St. Inez, Panaji Goa.

...Workman/Party I

V/s

M/s Hertz Autoriders International Ltd.,  
1st Floor, Padmavati Towers,  
18th June Road,  
Panaji Goa.

... Employer/Party II

Workman/Party I represented by Adv. P. J. Kamat.

Employer/Party II represented by Shri A. M. Karnik.

Dated: 12-01-1998.

**AWARD**

In exercise of the powers conferred by clause (d) of section 10, sub-section (1) of the Industrial Disputes Act, 1947, the Government of Goa by Order No. 28/18/96-LAB dated 4-6-96 referred the following dispute for adjudication by this Tribunal.

"Whether the action of M/s Hertz Autoriders International Limited, Panaji Goa, in terminating the services of Mrs. Audrey H. Rebello, Operation Executive with effect from 3-6-1995 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/33/96 and registered AD notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I (For short "workman") filed her statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that the Employer/Party I (For short "Employer") offered to the workman the post of Operation Executive at its Goa Branch vide letter of appointment dated 28-1-95, which was accepted by her and she started working with the employer from 2-2-1995. That the business of the employer was that of renting out cars to the customers with or without drivers. That though the workman was designated as Operation Executive, she was doing the work of clerical nature such as typing, xeroxing, filling forms, holding of cash, attending reception, preparing duty chart, preparing 65 point checking list, recording mileage, etc. and she was working under the supervision of the Branch Manager. That she was being paid the monthly salary of Rs. 2,100/- and was also paid an amount of Rs. 500/- every month as re-imbursement of conveyance staff welfare and other expenses. That on 3-6-95, when she started for work as usual, she was told by Shri Mahatme, the Branch Manager, that her services were no more required and he verbally terminated her services. That by letter dated 7-6-95, she made a demand on the Vice-President of the employer, who is her appointing authority to reinstate her in service with full back wages and continuity in service. That since the employer did not reinstate her in spite of the receipt of the said letter, she raised an industrial dispute before the Labour Commissioner, Panaji, vide letter dated 25-7-95. That

in the conciliation proceedings held before the Asst. Labour Commissioner, the employer for the first time took up the defence that the workman had not reported for duty from 3-6-95. That in view of the stand taken by the employer, she went to report for work on 29-11-95 with a letter along with two witnesses. That, at that time the Branch Manager was not present in the office and hence she waited for his arrival. That at about 9.50 hrs. She received a telephone call from the Branch Manager asking her to report for duty on 1-12-95 and she recorded the said facts on the reverse of the letter which she carried with her and took the signatures of the said two witnesses. That she asked the Accountant to accept the said letter and he refused to do so stating that he had no authority to receive the said letter. That accordingly, she went to the office on 1-12-95 but the Branch Manager did not allow her to report for work and when demanded a letter to that effect, the Branch Manager refused to do so. That thereafter, she wrote a letter dated 1-12-95 to the employer placing all the facts on record and requested to allow her to report for work immediately. That she received a letter dated 1-12-95 from the Branch Manager admitting that she had been to the office to report for work on 29-11-95 and she was not allowed to do so, and further gave the reasons for doing so. That the conciliation proceedings ended in a failure and consequently, the present dispute was referred to this Tribunal. The workman contended that the termination of her services is illegal and unjustified and therefore, she is entitled to be reinstated in service with full back wages.

3. The employer filed the written statement which is at Exb. 6. The employer stated that this Tribunal has no jurisdiction to decide the dispute because the workman is not a 'workman' as defined under Sec.2(S) of the I. D. Act, 1947, as she was employed mainly in a managerial or administrative capacity and was drawing salary exceeding Rs. 1,600/- p.m. The employer stated that the services of the workman were not terminated but she deserted the employment of her own. The employer stated that the workman was not issued any letter of appointment but was issued a letter of offer of appointment and the total salary of Rs. 2,600/- p.m. was offered to her which offer the workman accepted and she joined employment from 28-1-95. The employer denied that the workman was doing the work as stated by her in the statement of claim, and stated that as an operation executive and the staff working for reservation duties handle matters pertaining to customer service and accounting cash, and the Reservation Executive were under her control and supervision and were directly reporting to her and not to the Branch Manager. The employer stated that there was no typing or xerox machine in its Goa office and that most of the business was done on credit cards and the workman was supervising the counter work carried out by her assistants. The employer denied that the workman was preparing the 65 points check list and stated that she was required to check the list prepared by her assistant. The employer stated that the Branch Manager was not satisfied with her performance and had to caution her from time to time and ultimately had to advise her to look out for another job. The employer stated that the workman abruptly stopped coming to the office for duties without any permission or intimation. The employer denied that the Branch Manager told the workman that her services were no more required or that her services were verbally terminated. The employer admitted of having written the letter dated 28-12-95 addressed to the Asst. Labour Commissioner, Panaji Goa and stated that it was in response to the communication from the Asst. Labour Commissioner asking the employer to submit the written comments. The employer denied that the Branch Manager telephoned to the workman and asked her to report for work on 1-12-95. The employer stated that the workman had abandoned her services of her own and hence the question of allowing her to report for duty did not arise. The employer denied that the workman was in regular employment or that she was employed in the permanent post. The employer stated that the employment of the workman was purely under

observation and she abandoned her services willingly on her own accord presumable to look out for some other job. The employer contended that since the services of the workman were not terminated, the question of reinstating her in services with full back wages did not arise. The workman thereafter filed Rejoinder which is at Exb. 7 controverting the pleadings made by the employer in the written statement.

4. On the pleadings of the parties, following issues were framed at Exb. 8.

1. Whether the Party I proves that though designated as Operation Executive, her duties were of clerical nature and she was working under the supervision of Branch Manager ?

2. Whether the Party I proves that the action of the party II in terminating her services from 3-6-95 is illegal and unjustified ?

3. Whether the Party II proves that the Party I is not a workman as defined under Sec. 2(s) of the I.D. Act, 1947 ?

4. Whether the party II proves that the services of the party I were not terminated but she voluntarily abandoned the services ?

5. Whether the Party I is entitled to any relief ?

6. What Award ?

5. My findings on the issues are as follows:-

Issue No. 1:- In the affirmative

Issue No. 2:- In the affirmative

Issue No. 3:- In the negative

Issue No. 4:- In the negative

Issue No. 5:- As per para 12 below

Issue No. 6:- As per order below

#### Reasons:

6. *Issue Nos. 1 & 3:*— Both these issues are taken up together as they are inter-related. Adv. Shri P. J. Kamat, the learned counsel for the workman has submitted that the nature of the work done by the workman has been stated by her in her deposition and there is no denial of the same from the employer in the cross examination of the workman. He has submitted there is also no counter evidence led by the employer to disprove the contention of the workman that she was doing the work as stated by her, except for a bare statement that she was employed as Operation Executive. His contention is that since the employer had raised the contention that the workman is not a 'workman' within the meaning of Sec. 2(s) of the I.D. Act, 1947, burden was on the employer to prove the same, and the employer has failed to discharge the said burden. He has submitted that considering the nature of the work which was being done by the workman, she falls within the meaning of "workman" as defined under Sec. 2(s) of the I.D. Act, 1947. Shri A. M. Karnik, representing the employer on the other hand has submitted that in fact the burden was on the workman to prove that she is a "workman" within the meaning of the I.D. Act, 1947. He has submitted that Shri Mahatme, the witness for the employer has stated in his deposition about the nature of the work done by the workman which shows that she is not a "workman" and therefore, the reference is not maintainable and consequently, this Tribunal has no jurisdiction to decide the dispute. His contention is that the workman was employed as Operation Executive which is a managerial or administrative post.

7. There cannot be two opinions that the Tribunal gets jurisdiction to decide the dispute only if the party who raises the dispute is a "workman" within the meaning of Sec.2(s) of the Industrial Disputes Act, 1947. The workman has contended that though she was appointed

as the Operation Executive, infact, she was doing the clerical work, and in her deposition she has stated the nature of the work done by her. It is the employer who took the defence that the workman is not a "workman" as defined under Sec.2(s) of the I.D. Act, 1947. By raising this plea, it is the employer who is trying to oust the jurisdiction of this Tribunal to decide the dispute. Therefore, the burden is on the employer to prove that the workman is not a "workman" within the meaning of Sec. 2(s) of the I.D. Act, 1947. I am supported in my view by the decision of the Bombay High Court in the case of Waman Ganpat Raut V/s Cadbury-Fry (India) Pvt. Ltd, reported in 1980 (41) FLR 156 and in the case of R.M. Nerlekar V/s The Chief Commercial Superintendent, Central Railway, Bombay reported in 1991 II CLR 789. In the case of Cadbury-Fry (India) Pvt. Ltd. (Supra), the Bombay High Court has held that when the employer challenges the maintainability of the reference by raising a plea that the workman is not a "workman" within the meaning of Sec. 2(s) of the I.D. Act, 1947, the burden is on the employer to prove such a plea. The High Court held that it is for the employer in the first instance to make good its challenge by leading oral and/or documentary evidence and thereafter, if at all, the burden would shift on the workman. In the case of R. M. Nerlekar (Supra), the Bombay High Court has held that a party who sets up a defence of ouster of jurisdiction of a Tribunal must prove the material requisite for such a plea. In this case, the employer had set up a defence that the applicant's are not "workman" within the meaning of Sec.2(S) of the Act and the Bombay High Court held that the burden lay upon the employer to prove that the applicants were not workmen within the meaning of the Act. This being the position of law, issue No. 2 was rightly framed thereby casting the burden on the employer to prove that the workman is not a "workman" within the meaning of the Act.

8. The workman has contended that though she was employed as an Operation Executive, she did the work of a clerical nature. The workman has examined her self and her deposition is on record. She has stated that she was doing the clerical work as that of typing, xeroxing, handing cash, working at the reception counter, verifying 65 point check list, noting down the mileage of car at the time when it was rented and at the time when it was returned. In the cross examination of the workman, it has not been denied that she was doing the above stated work. There is no suggestion put to her in this respect. The employer has also not brought on record any evidence documentary or otherwise to prove that the workman was doing the work other than stated by her. Shri Shashank Mahatme, the Branch Manager of the employer, in his deposition has stated that three counter Trainees were working under the workman and the said counter Trainees were required to prepare the documents for renting car, check the documents/cars, see the cleanliness of the cars, handle cash, make bills etc. In the cross examination of Shri Mahatme, the workman denied that any employees were working under her supervision or that she was doing any administrative work. The employer has not led any corroborative evidence either oral or documentary to prove that the workman was doing the supervisory, managerial or administrative work and that the counter trainees were working under her. The employer could have examined any of the counter trainees or any other employee to prove the above contentions. But, the employer did not do so. I therefore hold that the workman has succeeded in proving that though she was designated as Operation Executive, her duties were of clerical nature and was working under the supervision of the Branch Manager. Hence, I answer the issue No. 1 in the affirmative.

9. The next question is whether she is a "workman" as defined under Sec.2(s) of the I.D. Act, 1947. The contention of the employer is that she is not. Section 2(s) of the I. D. Act, 1947 defined "workman" as under:

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical,

operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —

(i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in the police service or as an officer or other employee of a prison; or

(iii) Who is employed mainly in a managerial or administrative capacity; or

(iv) Who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly or a managerial nature.

In the present case, it has been held by me that the workman was doing the work of clerical nature such as that of handling cash, working at the reception counter, verifying 65 point check list, noting down the mileage of the car etc. The employer has failed to prove that the workman was doing the supervisory and/or administrative work and that the counter trainees were working under her. The workman also does not fall within the exceptions contained in the definition of workman. Therefore, the workman is a "workman" within the meaning of Sec. 2(s) of the I.D. Act, 1947. I therefore, hold that the employer has failed to prove that the workman is not a "workman" as defined under Sec. 2(s) of the I.D. Act, 1947. Hence, I answer the issue No. 3 in the negative.

10. Issue No. 4:- The employer has taken the stand that the services of the workman were not terminated but she voluntarily abandoned her services with effect from 3-6-95. Whereas, it is the contention of the workman that when she reported for work on 3-6-95, the Manager, Mr. Mahatme told her that her services were no more required and hence her services stood terminated. Therefore, this issue is taken up first before issue No. 2. The Bombay High Court in the case of Gangaram Medekar V/s Zenith Safe Mfg. Co. & Ors. reported in 1996 I CLR 172 has held that the primary onus to lead evidence to prove voluntary abandonment of service is on the employer. The High Court has held that in the cases of voluntary abandonment of service, it is a matter of intention which is to be drawn on given set of facts and the employer unilaterally cannot say that the workman is not interested in employment and that for this reason, a domestic enquiry is required to be held. The High Court has further held that even before the Labour Court the employer is required to prove clearly by evidence that the workman had voluntarily abandoned his services. In the present case admittedly, the employer did not hold any domestic enquiry to prove its contention that the workman voluntarily abandoned her services. The employer has led evidence before this tribunal by examining Mr. Mahatme, the Branch Manager. It is to be seen whether there is sufficient evidence to hold that the workman had abandoned her service. As held by the Bombay High Court in the case of Gangaram Medekar (Supra) what is relevant in the case of voluntary abandonment of service, is the intention. The contention of the employer is that the workman was not interested in her service and she was looking out for a new job and therefore, she did not report for work from 3-6-95, as can be seen from the suggestions put to the workman in her cross-examination to this effect. The workman has denied these suggestions. This contention of the employer cannot be accepted because it is contrary to the evidence on record. The Branch Manager.

Mr. Mahatme in his deposition has himself admitted that he did not write any letter to the workman after she stopped attending the work from 3-6-95. Mr. Mahatme in his cross-examination has admitted that the workman wrote a letter dated 7-6-95 to the Vice-President of the employer/company and that he had received the copy of the said letter. He has further stated that he did not reply to the said letter denying the contents of the said letter. The said letter has been produced at Exb. W-3 colly. I have gone through the said letter wherein it has been stated by the workman that on 3-6-95 she reported for work as usual and the Branch Manager Mr. Mahatme informed her verbally that her services were no more required and verbally terminated her services. In the said letter she has made the demand that she should be reinstated in service with full back wages within 7 days of the receipt of the letter. This letter is enough to disprove the contention of the employer that the workman voluntarily abandoned her services because if it was so, the workman would not have written such a letter. This letter is written immediately i.e. within four days from the date of her alleged termination of her service. If the Workman had no intention to continue with her service and that she was looking out for a new job, she would not have written the above letter making allegations that her services were terminated and demanding reinstatement in service. If the allegations made by the workman in her said letter about termination of her service were not correct, the Vice President of the employer/company to whom the letter was addressed or the Branch Manager Mr. Mahatme to whom the copy was marked and which was received by him, ought to have replied to the said letter denying its contents. Mr. Mahatme in his cross-examination has stated that he did not reply to the said letter because it was not addressed to him but to the Vice President. This explanation of Mr. Mahatme is nothing but ridiculous and unacceptable. Firstly, because Mr. Mahatme was the Branch Manager and the workman was working under him and secondly because, the copy of the said letter was marked to him which was received by him as admitted by him. The said letter contained allegations which were made against him and hence he was the right person to reply to the said letter and not the Vice President. Another important factor which is to be noted is that Mr. Mahatme in his cross examination has admitted that the conciliation proceedings before the Asst. Labour Commissioner had started on 20-9-95 and further proceedings were held on 28-9-95 and 20-10-95. He has admitted that he did not mention to the Asst. Labour Commissioner on the said dates that the workman had failed to report for duty from 3-6-95. If the workman had really not reported for duty from 3-6-95, the employer would have definitely mentioned to the Asst. Labour Commissioner at the first available opportunity that the workman had voluntarily abandoned her services. However, the employer did not do so nor there is any explanation for not doing so. In my view therefore, there is no evidence from the employer that the workman abandoned her services from 3-6-95. The Bombay High Court in the case of Gangaram Medekar (Supra) has held that if the Labour Court finds that it is a word against the word, then the benefit should go to the workman and not to the employer. The workman has stated that when she reported for work on 3-6-95, Mr. Mahatme the Branch Manager told her that her services were not required and that her services were terminated from 3-6-95. In the absence of any evidence from the employer about abandonment of service, I have no reason to disbelieve the contention of the workman that the employer terminated her services with effect from 3-6-95. I therefore hold that the employer has failed to prove that the services of the workman were not terminated but she voluntarily abandoned her services. I hold that the services of the workman were terminated by the employer with effect from 3-6-95. In the circumstances, I answer the issue No. 4 in the negative.

11. *Issue No. 2:-* While deciding the issue No.4 it has been held by me that the workman did not abandon her services but her services were terminated. It is the contention of the workman that termination of her services is illegal and unjustified. The workman has produced

a letter dated 28-1-95 from the Vice-President at Exb. W-1 which according to her is the letter of appointment. The contention of the employer is that the said letter Exb. W-1 is not a letter of appointment but a letter of offer and the workman was not appointed on permanent basis. Mr. Mahatme, the Branch Manager has stated that after the letter of offer is accepted by the candidate, the performance is observed from time to time and on completion of satisfactory performance, letter of appointment is issued. This contention of Mr. Mahatme is not supported by any evidence. The letter dated 28-1-95 Exb. W-1 does not state that the workman was employed to a temporary post for a temporary period. It also does not state that the workman was kept on probation or observation. There is also no evidence that the post of Operations Executive to which the workman was appointed was a temporary post. On the contrary, Mr. Mahatme, the Branch Manager in his evidence has stated that the employer has already promoted a staff member in place of party 1. This clearly shows that the post of Operations Executive is a permanent post. The workman in her evidence has stated that since the employer in the written statement filed before the Asst. Labour Commissioner contended that she had failed to report for work from 3-6-95 without prejudice to the dispute raised by her, she reported for work on 29-11-95 alongwith the letter dated 29-11-95 Exb. W-6. She has deposed that on 29-11-95, Mr. Mahatme was not there in the office but on telephone he told her to report for work on 1-12-95. She has further deposed that she put some remarks on the original of the letter and on its copy in the presence of two witnesses who had accompanied her and when she asked the accountant to accept the original of the said letter, he refused to accept the same stating that he had no authority to accept the letter. She has further stated that on 1-12-95 she went to report for work, but Mr. Mahatme did not allow her to do so. No suggestions were put to the workman in her cross examination denying her above contentions. Infact, she was not cross examined at all on this aspect. As regards the incident of 29-11-95, the contention of the workman is corroborated by Shri Patrick Alphonso, the witness examined by her. He has stated that on 29-11-95, he had accompanied the workman to the office of the employer. He has identified his signature below the remarks marked from point 'A' to point 'B' on the letter dated 29-11-95 Exb. W-6. He has stated that the workman handed over the original of the letter dated 29-11-95 to the staff member but he refused to accept it. In his cross-examination, it was not suggested to him that he never visited the office of the employer alongwith the workman on 29-11-95. Shri Mahatme, the Branch Manager, in his cross-examination has admitted that he was not at the branch office on 29-11-95 and that the Accountant had informed the workman that he had no authority to accept the letter dated 29-11-95. He also admitted that he had written the letter dated 1-12-95 Exb. W-9, to the Asst. Labour Commissioner and in the said letter he had mentioned that the workman had reported for work on 29-11-95 and he had discussions with her on telephone. This supports the contention of the workman that she had visited the branch office for reporting for work on 29-11-95 and she had discussions with Mr. Mahatme on telephone. He has further admitted in his cross examination that the workman again came to the office on 1-12-95 and she was not allowed to report for work. The above evidence therefore clearly proves that it is the employer who has terminated the services of the workman and she did not abandon her services. The employment of the workman was to a permanent post. Her appointment was not temporary or for a temporary period. The services of the workman were not terminated for misconduct or for any other reason or on any other ground. There is absolutely no evidence to show that the performance of the workman was unsatisfactory and that she was informed about the short comings in her performance. Therefore, the termination of the services of the workman becomes illegal and unjustified. Besides, the letter dated 28-1-95 Exb. W-1 shows that the workman was appointed by the Vice President whereas the evidence shows that her services were

terminated by the Branch Manager, Mr. Mahatme, who is obviously inferior to the appointing authority. There is no evidence on record to show that the Branch Manager, Mr. Mahatme had the authority to terminate the services of the workman. On this ground also, the termination of services of the workman becomes illegal and unjustified. Considering all the above aspects, I am of the view that the workman has succeeded in proving that the termination of her services is illegal and unjustified. In the circumstances, I hold that the termination of the services of the workman by the employer is illegal and unjustified and hence I answer the issue No. 2 in the affirmative.

12. *Issue No. 5:-* Now, the next question for determination is, what relief should be awarded to the workman. The normal rule is that once the termination is held to be illegal and unjustified, the workman should be reinstated in service with full back wages, unless there are valid reasons for not doing so. In the present case, there is nothing on record to show that the past conduct of the workman was not good. There is also nothing on record to show that the workman was gainfully employed after her services were terminated. I therefore do not find any reason to deviate from the normal rule that the workman should be reinstated in services once it is held that the termination of service is illegal and unjustified. I am, therefore, of the view that in the present case, the workman is entitled to reinstatement in service with full back wages, and all other consequential benefits and I hold so accordingly.

In the circumstances, I pass the following order.

#### Order

It is hereby held that the action of M/s Hertz Authoriders International Limited, Panaji-Goa, in terminating the services of the workman Mrs. Audrey Hellen Rebello, Operation Executive, with effect from 3-6-95 is illegal and unjustified. The workman Mrs. Audrey H. Rebello is ordered to be reinstated in services with full back wages and all other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd/  
(AJIT J. AGNI)  
Presiding Officer  
Industrial Tribunal

### Department of Law and Judiciary

#### Law Establishment Division

#### Order

No. 4-9-84/LD(6) PF

In exercise of the powers conferred by sub-section (1) of section 24 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and after consultation with the High Court of Bombay, the Government of Goa hereby appoints Shri Avinash P. Lawande, Advocate, as Public Prosecutor for conducting any prosecution, appeal or other proceeding on behalf of the State Government in the High Court of Judicature at Bombay, Panaji Bench, Goa with effect from the date he assumes charge.

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 28th April, 1998.

#### Notification

No. 3-26-84/LD

In exercise of power conferred by rule 1 of order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (Central Act 5 of 1908), the Government of Goa hereby amend the Government Notification No. 3-25-84-LD dated 2-6-1987 (hereinafter referred to as the "said Notification"), as follows, namely, in the Schedule to the said Notification, after Entry 42, the following Entry shall be inserted, namely;

"43 Director of the Directorate of Women & Child Development, Goa Government".

By order and in the name of the Governor of Goa.

N. B. Narvekar, Under Secretary (Law).

Panaji, 24th March, 1998.

#### Notifications by the High Court of Judicature, Appellate Side, Bombay.

No. A. 3902/G/98

The Honourable the Chief Justice and Judges are pleased to make the following postings:—

Name and present posting	New posting
1) Shri S. J. Natekar, Chief Judicial Magistrate & Civil Judge (Senior Division) <b>Margao.</b>	<b>Ponda</b> vice Shri B. P. Deshpande transferred.
2) Shri B. P. Deshpande, Civil Judge (Senior Division and J. M. F. C., <b>Ponda.</b>	<b>Margao</b> vice Shri S. J. Natekar, transferred.
3) Shri S. M. Sangodkar, Civil Judge (Senior Division) and J. M. F. C., <b>Mapusa.</b>	<b>Quepem</b> vice Shri P. V. Kamat, transferred.
4) Shri P. V. Kamat, Civil Judge (Senior Division) and J. M. F. C., <b>Quepem.</b>	<b>Bicholim.</b>
5) Smt. Vijay Jetley, Civil Judge (Junior Division) and J. M. F. C., <b>Bicholim.</b>	<b>Margao</b> vice Shri V. M. D'Silva, transferred.
6) Shri V. M. D'Silva, Civil Judge (Junior Division) and J. M. F. C., <b>Margao.</b>	<b>Bicholim</b> vice Smt. Vijay Jetley, transferred.

High Court, Appellate Side,  
Bombay, 29th April, 1998.

N. V. Dabholkar  
Registrar.

No. A. 1201/G/98

The Honourable the Chief Justice and Judges are pleased to make the following postings:—

Name and present posting	New posting
1) Shri V. P. Shetye, District & Sessions Judge, <b>Panaji.</b>	<b>Margao</b> vice Shri N. A. Britto, transferred.
2) Shri N. A. Britto, District & Sessions Judge, <b>Margao.</b>	<b>Panaji</b> vice Shri V. P. Shetye, transferred.
3) Shri A. D. Salkar, Special Judge, NDPS Court & Additional District Judge, <b>Mapusa.</b>	<b>Panaji</b> vice Shri D. R. Kenkre, transferred.
4) Shri D. R. Kenkre, Additional District and Sessions Judge, <b>Panaji.</b>	<b>Mapusa</b> vice Shri A. D. Salkar, transferred.

High Court, Appellate Side,  
Bombay, 29th April, 1998.

*N. V. Dabholkar*  
Registrar.

## Department of Personnel

### Order

No. 22/22/97-PER

On the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/37(2)/96 dated 30-3-1998, the Governor of Goa is pleased to promote on regular basis the following Junior Scale Officers of Goa Police Service to the Senior Scale of the said Service in the pay scale of Rs. 10000-325-15200, under Rule 21 of the Goa Police Service Rules, 1997 with effect from the date of taking over their new posting as indicated below:—

Sr. No.	Name of the promoted Officer	Posted on promotion
1.	Shri Alex Rasquinha, Dy. Superintendent of Police (H. Q.) Panaji.	Principal, Police Training School Valpoi, thereby relieving Shri A. K. Singh, Superintendent of Police (H. Q.) of the additional charge.
2.	Shri R. D. Lotlikar, Sub Divisional Police Officer, Vasco.	Superintendent of Police (South) Margao (vacant post).
3.	Shri S. V. P. Raikar, Dy. Superintendent of Police/Jr. Staff Officer (Home Guards), Panaji.	Dy. Commandant Gen- eral (Home Guards & Dy. Director Civil Defence), Panaji thereby relieving Shri S. Golcha, Superin- tendent of Police (CID) of the additional charge.

Shri J. O. D'Souza, Sub Divisional Police Officer, Margao shall look after the charge of the post of Sub Divisional Police Officer, Vasco, in addition to his own duties without any additional remuneration, until further orders.

By order and in the name of the Governor of Goa.

*S. S. Keshkamat*, Joint Secretary (Personnel).

Panaji, 13th April, 1998.

### Order

No. 3/1/89-PER (Vol. I) Part

A copy of the Notification No. 14015/4/97-AIS (I) dated 5-5-1998 from Government of India, Ministry of Personnel, New Delhi, is hereby published for general information.

*S. S. Keshkamat*, Joint Secretary (Personnel).

Panaji, 1st June, 1998.

F. No. 14015/4/97-AIS (I)

GOVERNMENT OF INDIA

Ministry of Personnel, P. G. & Pensions

(Department of Personnel & Training)

New Delhi— 1, the 5th May, 1998.

### Notification

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 read with sub-regulation (1) of regulation 9 of the Indian Administrative Service (Appointment by promotion) Regulation, 1955, the President is pleased to appoint Shri S. K. Jain, a member of Goa State Civil Service to the Indian Administrative Service with immediate effect on probation and to allocate him to the Joint Cadre of Arunachal Pradesh-Goa-Mizoram-Union Territories under sub-rule (1) of rule 5 of the Indian Administrative Service (Cadre) Rules, 1954.

*Sd/-*

(R. VAIDYANATHAN)  
Desk Officer.